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*Attorneys for Plaintiff*  
*M. Shanken Communications, Inc.*

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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M. SHANKEN COMMUNICATIONS,  
INC.,

Plaintiff

-against-

P4 PERFORMANCE MANAGEMENT,  
INC., ANTHONY POMPLIANO JR.,  
VIVIAN ONELLO, AND STEVE  
MORTIBOY,

Defendants.

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: No. 07-CV-08820 (HB)  
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: **REPLY TO COUNTERCLAIMS**  
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Plaintiff M. Shanken Communications, Inc ("Shanken"), through its undersigned attorneys Reed Smith LLP, for its Reply to the Answer and Counterclaims (the "Counterclaims") of Defendant P4 Performance Management Inc. ("P4"), alleges as follows:

**ANSWER TO FIRST COUNTERCLAIM**

56. Shanken denies the allegations in paragraph 56 of the Counterclaims and specifically denies that its employees damaged any systems.

57. Shanken denies the allegations in paragraph 57 of the Counterclaims.

58. Shanken denies the allegations in paragraph 58 of the Counterclaims.

59. Paragraph 59 of the Counterclaims states legal conclusions to which no response is required. To the extent that a response is required, Shanken denies the allegations in paragraph 59 of the Counterclaims.

60. Shanken denies the allegations in paragraph 60 of the Counterclaims.

61. Shanken denies the allegations in paragraph 61 of the Counterclaims.

62. Shanken denies the allegations in paragraph 62 of the Counterclaims.

63. Paragraph 63 of the Counterclaims states legal conclusions to which no response is required. To the extent that a response is required, Shanken denies the allegations in paragraph 63 of the Counterclaims.

#### **ANSWER TO SECOND COUNTERCLAIM**

64. Shanken denies the allegations in paragraph 64 of the Counterclaims.

65. To the extent that a response is required to the "Wherefore" paragraph of the Counterclaims, Shanken denies all allegations in said paragraph.

#### **FIRST AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims fail to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims are barred by the doctrine of equitable estoppel.

#### **THIRD AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims are barred by the doctrine of unclean hands.

#### **FOURTH AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims are barred by the doctrine of laches.

#### **FIFTH AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims are barred by the doctrine of unjust enrichment.

**SIXTH AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

Any harm suffered by P4 is a result of P4 own actions and/or negligence.

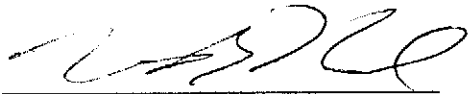
**SEVENTH AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

The Counterclaims are barred on the grounds of waiver.

**WHEREFORE**, Plaintiff, M. Shanken Communications, Inc. demands judgment dismissing the Counterclaims with prejudice, awarding plaintiff its costs, including reasonable attorney's fees, and disbursements incurred in this action and awarding such other and further relief as the Court deems just and proper.

Dated: December 26 2007  
New York, New York

REED SMITH LLP

By: 

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